

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,

Plaintiff-Respondent,

v.

MITCHELL R. LEMASTER,

Defendant-Petitioner

Case No. 1:10-CR-0056

Case No. 1:16-CV-0013

OPINION & ORDER

[Resolving Doc [55](#), 1:10-CR-0056]

[Resolving Doc. [1](#), 1:16-CV-0013]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

On August 16, 2010, Defendant-Petitioner Mitchell R. Lemaster pled guilty to a one count indictment charging him with being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1).¹ At sentencing, this Court determined that Lemaster was an armed career criminal under 18 U.S.C. § 924(e)(1), the Armed Career Criminal Act (ACCA). Under the ACCA, a defendant faces a fifteen year mandatory minimum sentence if he is charged as a felon in possession of a firearm and has three or more earlier “violent felony” convictions. Lemaster’s sentencing under the ACCA was based on three prior Ohio burglary convictions: one count of third-degree burglary, and two counts of fourth-degree burglary.²

On June 26, 2015, the Supreme Court decided *Johnson v. United States*. *Johnson* held that one prong of the ACCA’s definition of a “violent felony” — the residual clause — violates due process and is unconstitutionally vague.³ As a result, predicate felonies under the residual clause cannot be the basis for sentencing under the ACCA.

¹ Doc. [33](#). All citations are to the docket for 1:10-CR-0056.

² Doc. [58](#) at 2; Doc. [55](#) at 4.

³ ___ U.S. ___, 135 S.Ct. 2551 (2015)

Case No. 1:15-CV-1869
Gwin, J.

Lemaster brings this habeas petition seeking re-sentencing and argues that his prior Ohio burglar convictions only qualified as predicate felonies under the residual clause. The government has filed a response to Lemaster's petition. The government largely concedes Lemaster's position.⁴ For the following reasons, the Court **GRANTS** Lemaster's petition.

I. Legal Standard

[Title 28 United States Code Section 2255](#) gives a federal prisoner post-conviction means of collaterally attacking a conviction or sentence that he alleges violates federal law. Section 2255 provides four grounds upon which a federal prisoner may challenge his conviction or sentence:

- 1) That the sentence was imposed in violation of the Constitution or laws of the United States;
- 2) That the court was without jurisdiction to impose such sentence;
- 3) That the sentence exceeded the maximum authorized by law; or
- 4) That the sentence is otherwise subject to collateral attack.⁵

To prevail on a § 2255 motion alleging a constitutional error, the movant "must establish an error of constitutional magnitude which had a substantial and injurious effect or influence on the proceedings."⁶

Under [28 U.S.C. § 2255\(f\)\(3\)](#), the one-year statute of limitations for seeking habeas relief runs from "the date on which the right asserted was initially recognized by the Supreme Court."

⁴ Doc. [58](#).

⁵ [28 U.S.C. § 2255\(a\)](#).

⁶ [Watson v. United States](#), 165 F.3d 486, 488 (6th Cir. 1999) (citing [Brecht v. Abrahamson](#), 507 U.S. 619, 637-38 (1993)).

Case No. 1:15-CV-1869
Gwin, J.

II. Discussion

Defendant's petition is timely.⁷ Moreover, in light of *Johnson*, a criminal defendant who received an enhanced sentence under the residual clause of the ACCA received a sentence that was "imposed in violation of the Constitution."⁸

The parties both state that Defendant's predicate convictions for third- and fourth-degree burglary in Ohio fell under the residual clause only.⁹ The Court agrees. Defendant's earlier sentence was unconstitutional, and Defendant is entitled to relief.

The Court **GRANTS** Lemaster's petition. The Court will hold a hearing to resentence the Petitioner.

IT IS SO ORDERED.

Dated: March 9, 2016

s/ James S. Gwin
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE

⁷ *Johnson* was decided on June 26, 2015. This petition was filed within one year of that date on January 5, 2016. Doc. [55](#).

⁸ [28 U.S.C. § 2255\(a\)](#); see also *In Re: Watkins*, 810 F.3d 375, 382-383 (6th Cir. 2015) (holding that *Johnson* is retroactively applicable on collateral review in a § 2255 habeas petition).

⁹ Doc. [55](#) at 4 (collecting cases); Doc [58](#) at 4 (collecting cases).